

### **REMARKS/ARGUMENTS**

In response to the Restriction Requirement mailed November 9, 2009, Applicants hereby elect, with traverse, the claims of Group II, claims 19-35, drawn to an injectable formulation.

Applicants acknowledge, with appreciation, the Examiner's indication that "where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claims will be considered for rejoinder" (*see*, pages 4 and 5 of the Restriction Requirement).

As noted, the foregoing election is made with traverse. Restriction of an application is discretionary, and a restriction requirement is made only to avoid placing an undue examination burden on the Examiner and the Office. Where claims can be examined together, without undue burden, the Examiner must examine the claims on the merits, even though they are directed to independent and distinct inventions. MPEP § 803.01.

Since Groups I-II are closely related inventions based on the same inventive concept, *i.e.*, an injectable formulation and its use for administering a therapeutic agent, Applicants respectfully submit that examining the claims of Group I-III together would not place an undue burden on the Examiner. As such, Applicants make the election with traverse and request that the Restriction Requirement be withdrawn.

### **CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Appl. No. 10/539,931  
Response dated February 9, 2010  
Reply to Rest. Req. of November 9, 2009

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,

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